

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DATE: March 5, 2013

LEONARD DAVIS
Judge Presiding

Court Reporter: Shea Sloan
Judy Werlinger

Law Clerk: Gabrielle LaHatte

Court Administrator: Rosa L Ferguson

VIRNETX INC. V CISCO SYSTEMS, INC.	CIVIL ACTION NO: 6:10-CV-417 JURY TRIAL – DAY 2
ATTORNEYS FOR PLAINTIFF	ATTORNEYS FOR DEFENDANTS
SEE SIGN-IN SHEETS	

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 8:45 am

ADJOURN: 4:10 pm

TIME:	MINUTES:
8:45 am	Hearing outside presence of jury.
	Mr. Stadnick addressed the Court regarding Plaintiff calling Mark Jones and soliciting testimony regarding the Microsoft trial. Defendant objects to this testimony.
	Mr. Caldwell responded that Mr. Jones won't go in depth about the Microsoft case. Court inquired as to why the plaintiff wants to introduce him in their case-in-chief. Mr. Caldwell responded that it is to just introduce him. Court will allow plaintiff to call him and will take up objections at that time.
	Mr. Stadnick addressed the Court on deposition testimony of Mr. Lachuk, an SAIC employee and objects as to hearsay.
	Mr. Cassady responded. Court overruled objection.
	Mr. Stadnick addressed the Court regarding 2 documents that are part Nettles' expert report and objects as to hearsay. Mr. Cassady responded. Court asked to see the document in question. Court asked them to lay the predicate and will hear any objections at that time.
	Mr. Stadnick addressed the Court on Plaintiff's Exhibits 250, 266, 645 and 643 as being documents produced in the Apple trial. Mr. Cassady responded. Mr. Stadnick replied. Court will take up at the time they are offered.
9:00 am	Court in recess.
9:00 am	Jury seated in the courtroom. Court addressed the jury and welcomed them back.

TIME:	MINUTES:
	Dr. ROBERT SHORT on witness stand. Witness previously sworn.
	Cross examination of Dr. Short by Mr. Desmarais continued.
	Court inquired as to Exhibits being offered today.
	Mr. Stadnick offered Defendant's List of Exhibits Admitted on 3/5/2013, and without objection exhibits on list admitted. Defendant's Exhibits #DX-C 1423, DX-C 1424, DX-C 1425 AND DX-J 195A admitted.
	Mr. Cassidy offered Plaintiff VirnetX's Pre-Admitted Trial Exhibit List for March 5, 2013, and without objection, exhibits on list admitted. Plaintiff's Exhibit 1 – 6, 10 – 12, 16 – 18, 21, 24, 27, 32, 34, 36, 37, 40, 51 – 53, 57, 58, 60, 66, 67, 89, 90, 92, 107, 112, 121, 122, 124 – 129, 159, 174, 177, 186, 187, 201, 213, 292, 344, 359, 360, 437, 438, 489, 543, 625 – 627, 630, 644, 648, 650, 654, 722, 727, 732, 740, 747, 753, 755, 758, 760, 763.
	Cross examination of Dr. Short by Mr. Desmarais continued. Mr. Desmarais asked to mark the screen shot "Time Line" as Defendant's Demonstrative C-2002 , and without objection as to demonstrative, exhibit marked. Mr. Desmarais asked to mark another screen shot as Defendant's Demonstrative C-2001 , and without objection as to demonstrative, exhibit admitted.
	Mr. Desmarais passed the witness. Redirect examination of Dr. Short by Mr. Caldwell. . Mr. Caldwell marked demonstrative as Plaintiff's "next" demonstrative . Court so marked
	Mr. Caldwell passed the witness. Recross examination of Dr. Short by Mr. Desmarais.
	Mr. Desmarais passed the witness. Mr. Desmarais offered Dr. Short's Slides 1-49, as Defendant's Demonstratives , and without objection, admitted. Mr. Caldwell offered Dr. Short's Slides as Plaintiff's Demonstratives , and without objection, admitted.
	Redirect examination of Dr. Short by Mr. Caldwell.
	Mr. Caldwell passed the witness.
	Mr. Cassidy will call EDMUND MUNGER by video deposition.
	Court explained the video deposition process to the Jury.
	Court addressed the Jury regarding questions for Dr. Short. Jury passed up their questions.
	Court asked counsel to approach. (Bench Conference held).
	Court asked Dr. Short to get back on the witness stand. Jury Question asked. Witness responded. No further questions by the parties.
	Video Deposition of EDMUND MUNGER played for the Jury. (25 Minutes – Plaintiff; 5 Minutes – Defendant).
10:15 am	Court in recess until 10:30 am.
10:30 am	Trial resumed. Jury seated in the courtroom.
	Mr. Cawley called KENDALL LARSEN to the witness stand. Witness previously sworn.
	Direct examination of Mr. Larsen by Mr. Cawley.
	Mr. Jones objects to Plaintiff's Exhibit #159. Court asked counsel to approach the bench and tender exhibit. (Bench Conference held).
	Mr. Jones withdrew objection as to Page 27 of Plaintiff's Exhibit #159.
	Direct examination of Mr. Larsen continues.
	Mr. Cawley passed the witness. Cross examination of Mr. Larsen by Mr. Jones.
12:05 pm	Court in recess until 12:45 pm
12:50 pm	Trial resumed. Jury present in the courtroom.

TIME:	MINUTES:
	Cross examination of Mr. Larsen by Mr. Jones continued. Mr. Jones offered Plaintiff's J-59, and without objection, Plaintiff's J-59 admitted. (Should be Defendant's Exhibit J-59). Cross examination continued.
	Mr. Caldwell asked to approach the bench. (Bench Conference held).
	Court addressed the Court Reporter at the bench.
	Cross examination of Mr. Larsen continued.
	Mr. Jones asked to approach bench. (Bench Conference held).
	Mr. Jones passed the witness.
	Court in recess.
1:25 pm	Trial resumed. Jury not present in the courtroom.
	Mr. Cawley addressed the Court on opening the door on the Apple verdict. Mr. Jones responded. Mr. Cawley further responded. Court inquired as to the prejudice to Cisco. Mr. Jones responded. Mr. Cawley responded as to relevance. Court opined that the prejudice outweighs the relevance as to the Apple verdict, so asked parties not to go into it.
	Mr. Caldwell asked for a clarification and instruction that Cisco cannot use Mr. Larsen's answer to that question for any purpose in the case. Mr. Jones withdrew question and answer. Court will instruct the jury to disregard the last question.
1:30 pm	Jury seated in the courtroom.
	Court addressed the Jury and advised that one of the Jury Members has taken ill and the Court has excused her. (Seated Juror #4 excused during recess).
	Court asked Mr. Jones to clarify earlier admission of Plaintiff's Exhibit J-59, whether it was Plaintiff's or Defendant's Exhibit. Mr. Jones indicated it was Defendant's Exhibit J-59.
	Court instructed Jury to disregard question and answer before the break.
	Redirect examination of Mr. Larsen by Mr. Cawley.
	Recross examination of Mr. Larsen by Mr. Jones. Mr. Jones passed the witness.
	Court asked the Jury for their questions of this witness. No questions for Mr. Larsen from the Jury.
	Mr. Cassidy asked that Mr. Larsen be excused from the Rule. Defendant has no objection. Witness excused from the Rule.
	Mr. Caldwell called Dr. MARK JONES to the witness stand. Witness previously sworn.
	Direct examination of Dr. Jones by Mr. Caldwell.
	Mr. Desmarais asked to approach bench. (Bench Conference held).
	Mr. Caldwell passed the witness. Cross examination of Dr. Jones by Mr. Desmarais.
	Mr. Caldwell asked to approach the bench. (Bench Conference held).
	Cross examination of witness continued.
	Mr. Desmarais passed the witness. Redirect examination of Dr. Jones.
	Mr. Caldwell passed the witness. Recross examination of Dr. Jones.
	Mr. Desmarais passed the witness. Redirect examination of Dr. Jones.
	Court asked Jury to pass their questions forward. No questions of this witness.
2:15 pm	Court in recess.
2:30 pm	Trial resumed. Jury seated in the courtroom.
	Mr. Curry called Dr. SCOTT NETTLES to the witness stand. Witness previously

TIME:	MINUTES:
	sworn.
	Direct Examination of Dr. Nettles by Mr. Curry. Mr. Curry offered Plaintiff's Exhibits 597 and 671, and with objection being overruled, Plaintiff's Exhibits 597 and 671 admitted.
	Direct examination of Dr. Nettles continued. Mr. Curry offered Plaintiff's Exhibit 778 , and with objection being overruled, exhibit admitted.
4:05 pm	Court addressed the Jury and recessed them for the day until 9:00 am the next day.
	Court gave times to parties. Plaintiff has used 5 hours and 40 minutes and Defendant has used 1 hour and 52 minutes. Court asked the courtroom participants to wait 5 minutes before leaving to allow the Jury to leave the building.
	Court addressed the parties and has received a Note from Jury. They are requesting a different salad for tomorrow and iced tea.
	Mr. Caldwell addressed the Court on Demonstratives. Court asked that they bring up tomorrow.
4:10 pm	There being nothing further, Court adjourned for the day.